IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 3646 of 2007

(S.T. NO. 372/2005 OF THE J.F.C.M -III, THRISSUR)

PETITIONER: ACCUSED:

SUMESH A.V., S/O. VELAYUDHAN,
AROOTAYIL HOUSE, KURIACHIRA P.O.,THRISSUR DISTRICT

BY ADV. SRI.JIJO PAUL

RESPONDENTS: STATE:

THE STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
OLLUR POLICE STATION - THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM,
KOCHI-31.

BY GOVERNMENT PLEADER SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3646 of 2007

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Dated this the 6th day of December, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. Cognizance was taken as early as in 2005, as can be seen from the number assigned to the case, i.e. S.T. 372 of 2005. The petitioner has not entered appearance so far. Consequently coercive processes have been issued against him. The petitioner finds such processes issued by the learned Magistrate chasing him.

2. According to the petitioner he is absolutely innocent. His absence was not willful or deliberate, but on account of reasons beyond his control. He is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Sessions Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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